

REPUBLIC OF SOUTH AFRICA



**IN THE TAX COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)**

CASE NO: 0085/2019

1. REPORTABLE: YES/NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED.

1 September 2020
DATE

Vally J
SIGNATURE

In the matter between:

ABC (PTY) LTD

APPLICANT

and

**THE COMMISSIONER OF THE
SOUTH AFRICAN REVENUE SERVICE**

RESPONDENT

J U D G M E N T

VALLY J

[1] There are three cases before me. The parties, facts and legal issues in all three are, for purposes of this application, the same. In the circumstances, the parties agreed to focus on only one of the cases. The outcome, they agreed, would apply to all three.

[2] The applicant's motion contains prayers which are that it be granted (i) an extension of the prescribed period for the delivery of its notice of objection, and (ii) condonation for the late filing of its notices of objection to the 2014, 2015 and 2016 tax assessments it had received. However, during oral submissions it maintained that it was seeking only the latter relief. The collective tax assessment for these three years is R33 943 594.99.

[3] As this particular application concerns the 2016 tax assessment, only the facts relating to that assessment will be taken into account. The applicant received the assessment on 17 January 2018. It was for R28 392 119.28. More than a year later, on 18 March 2019, the applicant's attorney delivered a request to the respondent, per email, seeking a reduction of the assessment. The request was made in terms of section 93(1)(d)(ii) of the Tax Administration Act 28 of 2011 (the Act). The applicant contended that the assessment contained errors in that it relied on alleged additional income, which the applicant did not receive. On 12 April 2019, it received a formal response from the respondent informing it that its request was denied, as the criteria set out in section 93(1) of the Act for a reduced assessment were not met. The applicant accepts that the request was correctly refused. Four months later, on 18 August 2019, the applicant filed notices of objection for the each of the three years' assessments. The notices of objection fell well outside the time periods allowed for filing such notices: the 2014 notice was 679 days out of time, the 2015 notice was 641 days out of time and the 2016 notice was 395 days out of time.

[4] The applicant was required to apply for an extension of the time period prescribed. It failed to do so. The extension is regulated by section 104(5) of the Act, the relevant part of which provides that the period should not be extended for a period exceeding 30 business days unless a senior official of the South African Revenue Service (SARS) is satisfied that "exceptional circumstances exist which gave rise to the delay in the lodging of the objection".

[5] The applicant simply lodged the objection. It provided no account of why it took so long to do so. It did not seek the extension. No extension was thus secured from the SARS. Consequently, the applicant found itself in a dilemma. It had not sought an extension, nor had it applied for condonation to this Court for its failure to comply with the prescribed time periods, at least not until 20 July 2020, when it realised that its objection was not being dealt with by the respondent on the grounds that it was not properly filed.

[6] In order to succeed the applicant has to provide a full and detailed account of the cause(s) for its failure to comply with the prescribed time period – in other words, the cause(s) for its delay in prosecuting its objection. And to this end it must give a full account of the entire period of the delay.¹ This would allow a court to assess the cause of the delay and make a determination as to the responsibility for the delay.²

[7] The founding affidavit contains no factual detail that explains why it took so long to bring the application and why the failure to comply with the prescribed period was not wilful. What it does contain though is an assertion that the applicant has a very good case on the merits. It is this assertion that the applicant relied upon for its relief.

[8] In my judgment, its failure to explain its delay is fatal to the application. The period of the delay in prosecuting its case is lengthy. The respondent cannot be expected to endure an unexplained delay of so lengthy a period. It is entitled to having its cases finalised. And, it is in the public interest that litigation is finalised within a reasonable period. .

[9] Furthermore, the applicant provides no detail as to why its prospects of success are strong. The applicant merely includes the entire notice of objection without explaining why it bears any merit. It does not explain why the respondent's assessments were incorrect – it simply avers that the objection enjoys a strong prospect of success, without giving any detail. This is simply inadequate. There is no way of knowing whether there is any substance to the averment. The applicant bears the onus of showing that its case enjoys such a strong prospect of success that the Court should, in the interest of justice, condone its failure to abide the prescribed time periods for the lodging of its objection. It has failed to discharge the onus.

[10] Accordingly, I come to the conclusion that the application should be dismissed.

[11] The parties agreed that costs should follow the result.

¹ *Van Wyk v Unitas Hospital* 2008 (2) SA 472 (CC) at [22].

² See: *Uitenhage Transitional Local Council v S A Revenue Service* 2004 (1) SA 292 (SCA) at [6].

Order

1. The following orders are made:
 - 1 The application is dismissed.
 - 2 The applicant is to pay the costs of the respondent.

Vally JJudge: Tax Court,
Johannesburg

Dates of hearing : July 2020
Date of judgment : 1 September 2020